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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/296,120 04/21/99 REDDIN

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EXAMINER

SUTHERLAND ASBIL & BRENNAN, LLP  
999 PEACHTREE STREET, NE  
ALTANTA GEORGIA GA 30309-3996

JANVIER, J

ART UNIT

PAPER NUMBER

2162

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11/06/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/296,120	REDDIN ET AL.
	Examiner Jean D Janvier	Art Unit 2162

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 16 September 2001.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-66 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a)  The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                              | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Specification***

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed, thereby helping one having ordinary skill in the art understand the nature of the invention.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 44-45 and 58 are rejected under 35 U.S.C. 101 because the claimed invention is directed to a non-statutory subject matter.

As per claims 44-45 and 58, it should be noted that a computer code (software or program) does not do anything per se, unless it is encoded or stored on a computer readable medium and enabled when, executed on a computer or processor, to perform specific functions or instructions. The following is a generic example of a proper computer program product claim-

A computer program product encoded on a computer readable medium and comprising code that, when executed on a computer or processor, performs the following:

Function A

Function B

Function C

And so on

Although claim 58 recites a first, second and a third field within a data structure, it should be noted that these fields merely represent a collection of data rather than indexes or pointers, thereby rendering the claim non-statutory under 101 rejection.

*Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 44-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In fact, the steps of claim 1 as recited should be incorporated within the bodies of claims 44-45 and upon executing proper computer instructions on a computer processor these steps can be performed. Hence, claims 44 and 45 must be independent claims.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-66 are rejected under 35 U.S.C. 102(b) as being anticipated by Deaton et al, US Patent 5,649,114.

As per claim 1, Deaton et al discloses a method comprising the steps of -

1.

Determining one or more representative activities, **such as the customer's purchase history data, including volume purchase data, frequency purchase data, timing of purchase data, recency of purchase data, preference data, and so on**, of said predetermined type of consumer so that the customer can be specifically targeted (col. 86: 65 to col. 89: 22; col. 81: 56 to col. 82: 11; figs. 27-32; col. 10: 30-67);

Determining one or more representative uses of said item by said predetermined type of consumer **based upon the customer's purchase history** during said one or more representative activities (col. 71: 31-45; col. 10: 30-67); and

Creating demand for said item by said predetermined type of consumer based upon said one or more representative uses of said item by said predetermined type of consumer during said

one or more representative activities by tracking products purchased by the customer (col.71: 31-45; col. 10: 30-67).

As per claims 2-4, Deaton et al further disclose a method comprising the steps of gathering lifestyle information through the purchase history of an individual consumer during a particular period of time and subsequently performing an analysis of such lifestyle information so that a personal discount coupon can be provided to the individual customer redeemable on a product that the consumer has previously indicated a tendency to buy (col. 71: 31-45; figs. 29; col. 10: 30-67).

As per claims 5-19, 24-31, 34-37, 39, 41-42 and 47-52, Deaton et al further disclose a method for customer promotion (advertising) wherein an identified customer using a check or credit card at a POS in a retail store during a shopping trip to pay for groceries and based on the identified customer prior shopping history, collected over a specific period of time, stored in a database associated with CVC Master Controller 965 of fig.19, he will receive a discount coupon redeemable during a future transaction on a particular promoted or advertised product, such as a brand of coffee, for which the said customer has previously indicated a tendency to buy upon analyzing his prior shopping transaction using conventional data mining and niche marketing techniques. This customized discount coupon is intended not only to encourage the identified customer to return to the store to buy more items, but also to promote the store products in general. This discount coupon, promoting this coffee brand, can be communicated to the identified customer at the POS in the retail store in a printed form by printing a hard copy using

receipt printer 969 connected to ECR of fig. 20 or the discount coupon can be electronically displayed to the customer on ECR display 968 of fig. 20 or stored in the database associated with CVC Master Controller 965 of fig. 19 or encoded on the customer's smart card 53 (col. 4: 52 to col. 10: 67; col. 71: 31-45; col. 89: 66 to col. 90: 34; figs. 29; col. 67: 23 to col. 68: 19).

As per claims 20-23, it is inherent in the art that a predetermined type of packaging will be carefully selected to package a promoted product based on some parameters associated with a target market, thereby making the promoted product or item more attractive to the targeted audience. For example, it is understood that Deaton's **promoted coffee** will be sold in a carefully selected package.

As per claims 32, 33, 38 and 43, it is inherent in the art that advertised products or promoted products or specials can be communicated to the customers through large posters displayed within the store or outside the store windows. It is also very popular in the industry to distribute product promotions such as coupons on flyers placed in the store to be picked by the customers upon entering the store. Furthermore, retailers find it very convenient and effective to advertise their products, including discount coupons, in a virtual environment or Internet via a Web site by having information displayed on (remote) screens associated with customers' computers upon accessing the retailers' web sites, thereby allowing millions of prospective customers to access their store in real time twenty-four hours a day and seven days a week (col.10: 33, 42, 45, 55).

As per claims 44-45, Deaton et al disclose a system or method having the appropriate Hardware and Software or program subroutines to perform the various steps or tasks as set forth in their system (figs. 1-47; col. 10: 30-67).

As per claim 40, it is anticipated in the Deaton et al system that an identifier customer may receive a discount coupon through the mail based on his purchase history criteria (col. 10: 63-67; col. 67: 23-39). It is also understood in the system of Deaton et al that a customer will originally fill out an application, providing customer's information, before a customer's personal check can be accepted by the retail store as payment. Further, the customer's information provided in the application can be used to profile the identified customer.

Claim 46 substantially recites the limitations of claim 1 and therefore, the limitations of claim 46 are rejected under a similar rationale. Claim 46 further recites determining the manner in which a predetermined type of consumer selects an item in a predetermined purchase shopping environment upon creating a demand for said item by said customer. As per these features, Deaton et al further disclose a method for customer promotion (advertising) wherein an identified customer using a check or credit card at a POS in a retail store during a shopping trip to pay for groceries and based on the identified customer prior shopping history, collected over a specific period of time, stored in a database associated with CVC Master Controller 965 of fig.19, he will receive a discount coupon redeemable during a future transaction on a particular promoted or advertised product, such as a brand of coffee, for which the said customer has previously indicated a tendency to buy upon analyzing his prior shopping transaction using

conventional data mining and niche marketing techniques. This customized discount coupon is intended not only to encourage the identified customer to return to the store to buy more items, but also to promote the store products in general. This discount coupon, promoting this coffee brand, can be communicated to the identified customer at the POS in the retail store in a printed form by printing a hard copy using receipt printer 969 connected to ECR of fig. 20 or the discount coupon can be electronically displayed to the customer on ECR display 968 of fig. 20 or stored in the database associated with CVC Master Controller 965 of fig. 19 or encoded on the customer's smart card 53 (col. 4: 52 to col. 10: 67; col. 71: 31-45; col. 89: 66 to col. 90: 34; figs. 29; col. 67: 23 to col. 68: 19).

53.

**determining the activities, or purchasing activities corresponding to the customer's purchase history collected over a period of time and stored in a database associated with CVC database of Master Controller 965 of fig. 19, of said consumer (col. 65: 61 to col. 70: 28);**

**determining the needs of said consumer for said beverage during said daily activities upon analyzing the customer's purchase history or prior shopping transaction collected over time using conventional data mining and/or niche marketing techniques to figure the customer purchase tendency (col. 71:31-45); and**

**marketing said beverage in association with said needs of said consumer for said beverage during said activities or shopping transaction activities collected over a period of time by providing a discount coupon redeemable on the product,**

**such as a brand of coffee, for which the customer has indicated a tendency to purchase (col. 71: 31-45).**

(col. 4: 52 to col. 10: 67; col. 89: 66 to col. 90: 34; figs. 29; col. 67: 23 to col. 68: 19).

54.

determining the number of said items selected within said purchasing environment **or retail store** during a first predetermined interval **or over a specific period of time through the customer's purchase history or current transaction at a POS (fig. 28-31);**

determining one or more types of shoppers, **whose shopping transaction has been analyzed using traditional data mining and/or niche marketing techniques**, for said item, **such as a brand of coffee**, in said purchasing environment **or retail store**, **whose has previously indicated based on his prior shopping transaction a tendency to buy a particular product or item (col. 71: 31-45);**

determining representative shopping activities of said one or more types of shoppers, **whose shopping transaction has been analyzed using traditional data mining and/or niche marketing techniques;**

determining representative uses for said item during said representative shopping activities of said one or more types of shoppers **upon analyzing one or more shopper's prior shopping transaction and subsequently determining the shopper(s) tendency to buy a particular product or item (col. 71: 31-45);**

deploying solutions or marketing strategies within said purchasing environment or retail store to create demand for said item, such as a brand of coffee, by said one or more types of shoppers based upon one or more of said representative uses derived from the shopper's purchase history of said

item during one or more of said representative transaction activities upon analyzing one or more shopper's prior shopping transaction and subsequently determining the shopper(s) tendency to buy a particular product or item (col.71: 31-45);

determining the number of said items selected or purchased within said purchasing environment or retail store during a second predetermined interval or second period of time or second preset number of weeks, said second predetermined interval occurring after said deploying step or marketing strategies which provide a discount coupon redeemable on the identified item or a brand of coffee to a qualified shopper (col.71: 31-45; figs. 28-31); and

determining the difference between the numbers of said items purchased during said first predetermined interval and said second predetermined interval upon analyzing, using conventional data mining and/or niche marketing techniques, an identified shopper's prior shopping transaction during a series of preset number of weeks and subsequently, upon meeting a predetermined criterion by the shopper, providing a discount coupon to the identified shopper or customer redeemable on the identified item, thereby making the coupon program more effective (col.71: 31-45; figs. 28-31).

Art Unit: 2162

(col. 4: 52 to col. 10: 67; col. 89: 66 to col. 90: 34; figs. 29; col. 67: 23 to col. 68: 19).

As per 55-56 and 63-64, it is anticipated in the Deaton et al system for customer promotion that a store will compute the average transaction amount or selling price of an item, such as a brand of coffee, on which a discount coupon is given to an identified customer or shopper based upon his prior shopping transaction, thereby determining the average gross profit margin for said item.

As per claim 57, it is anticipated that a retail store using the Deaton et al system can very easily determine the amount of money received based upon a difference between the number of identified items purchased during a first predetermined interval or a first preset number of weeks and a second predetermined interval or a second preset number of weeks, the average transaction amount for said identified item **upon analyzing, using conventional data mining and/or niche marketing techniques, an identified shopper's prior shopping transaction during a series of preset number of weeks and subsequently, upon meeting a predetermined criterion by the shopper, providing a discount coupon to the identified shopper or customer redeemable on the identified item, thereby making the coupon program more effective**(col.71: 31-45; figs. 28-31).

As per claim 58, Deaton et al disclose a system or method having the appropriate Hardware and Software or program subroutines to perform the various steps or tasks as set forth in their system (figs. 1-47; col. 10: 30-67) such as storing in a database associated with CVC

Art Unit: 2162

Master Controller 965 of fig.19 data representing one or more transaction activities of a predetermined type of consumer, data representing one or more uses of an item by said predetermined type of consumer based on the consumer's prior shopping transaction (col. 71: 35-45) and data representing one or more marketing solutions or marketing strategies (figs. 1-47) for the sale of said identified item to said predetermined type of consumer.

59.

**receiving data or purchase data at a POS during a current transaction** corresponding to representative **transaction** activities of said predetermined type of consumer, **who has previously indicated a tendency to buy an item based on his uses of the item** (col. 71: 31-45);

storing said data or purchase data corresponding to said representative transaction activities of said predetermined type of consumer in marketing database or a database associated with CVC Master Controller of fig. 19;

**receiving data or purchase data** corresponding to representative uses or consumption of said item or a certain type of coffee by said predetermined type of identified consumer, who **uses a check or credit card at a POS (Anticipated step-col.71: 31-45);**

storing said data or purchase data corresponding to said representative uses or consumption of said item or a certain type of coffee by said predetermined type of consumer in said marketing database or a database associated with CVC Master Controller of fig. 19, which holds consumer's purchase history (Anticipated step-col.71: 31-45);

determining a relationship or correlation between said data corresponding to said representative transaction activities of said predetermined type of consumer and said data corresponding to said representative uses or consumption of said item or a certain type of coffee by said predetermined type of consumer who uses a check or credit card at a POS (Anticipated step-col.71: 31-45), upon analyzing, using conventional data mining and/or niche marketing techniques, an identified shopper's prior shopping transaction during a series of preset number of weeks and subsequently, upon meeting a predetermined criterion by the shopper, providing a discount coupon to the identified shopper or customer redeemable on the identified item, thereby making the coupon program more effective; and

storing said relationship or correlation in said marketing database or a database associated with CVC Master Controller of fig. 19, which holds consumer's purchase history (Anticipated step-col.71: 31-45).

As per claims 60-62 and 65, it is anticipated in the system of Deaton et al that, upon analyzing, using conventional data mining and/or niche marketing techniques, an identified shopper's prior shopping transaction during a series of preset number of weeks and subsequently, upon meeting at least one predetermined criterion by the shopper, a discount coupon redeemable on an identified item or a certain type of coffee continuously used by the customer will be provided to the customer or shopper during a transaction at a POS, thereby making the coupon program distribution more effective (col. 71: 31-45). Moreover, it is understood that a message regarding the said discount coupon will be communicated to the identified customer at the POS

Art Unit: 2162

by displaying the message on the ECR display 968 of fig. 20, by printing the message using receipt printer 969 of fig. 20 or by encoding the message on the customer's smart card 53.

Regardless of the medium used, a copy of the message, which authorizes the identified customer to redeem the discount coupon, will be electronically stored in a database or marketing database of CVC Master Controller 965 of fig. 19 for verification. Finally, the redemption data regarding the discount coupon on the identified item will be stored in the database for further processing so that the effectiveness (conversion rate) of the discount coupon distribution program can be measured, as anticipated by Deaton et al (col. 71: 31-45; col. 4: 52 to col. 7: 54).

As per claim 66, Deaton et al disclose a system or method having the appropriate Hardware and Software or program subroutines to perform the various steps or tasks as set forth in their system (figs. 1-47; col. 10: 30-67) such as storing in a database associated with CVC Master Controller 965 of fig. 19 data representing one or more transaction activities of a predetermined type of consumer, data representing one or more uses of an item by said predetermined type of consumer based on the consumer's prior shopping transaction (col. 71: 35-45) and data representing one or more marketing solutions or marketing strategies (figs. 1-47) for the sale of said identified item to said predetermined type of consumer.

**Please consider the entire reference.**

### **Conclusion**

Although the following references were not used in this office action, they were highly considered. Applicants are further directed to consult these references for more details.

“Checking Out the Customer” by Lena H. Sun is a good prior art under a 102 rejection.

US Patent 5, 974,396A is a good prior art under a 102 rejection.

Further, all the IDS submitted by the Applicant read on the claimed invention.

Any inquiry concerning this communication from the Examiner should be directed to Jean D. Janvier, whose telephone number is (703) 308-6287). The aforementioned can normally be reached Monday-Thursday from 10:00AM to 6:00 PM EST. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner’s Supervisor, Mr. Eric W. Stamber, can be reached at (703) 305- 8469.

For information on the status of your case, please call the help desk at (703) 305-3900. Further, the following fax numbers can be used, if need be, by the Applicant(s):  
After Final- 703-746-7238  
Official Draft-703-746-7239  
Non-Official Draft- 703-746-7240

**Please provide support, that is page and line numbers, for any amended or new claim, otherwise any new claim language that is introduced in an amended or new claim will be considered as new matter.**



ERIC W. STAMBER  
PRIMARY EXAMINER

Application/Control Number: 09/296,120  
Art Unit: 2162

Page 16

10/29/01